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APPLICATION NO. 7,811,122	FILING DATE 1/22/97	FIRST NAMED INVENTOR ZILBERMAN	ATTORNEY DOCKET NO.
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HM32/1124

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EXAMINER
KURZBAN

ART UNIT 1623

PAPER NUMBER

11/24/98

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 9-11-98
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-20 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____.

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892 ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948 ☐ Other _____

Office Action Summary

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Amendment A filed 9-11-98 has been received and entered into the record.

Claims 1 - 20 are pending in the case.

Claims 1-20 stand rejected under 35 USC 103 as being unpatentable over Zikria in view of Weiss, Munkes et al. and Gerdin et al. for the reasons already of record on pages 2 - 4 if the Office action mailed 5-11-98.

Applicant's central argument is that there is no teaching in the prior art to suggest combining a host of known antioxidants along with hydroxyethyl starch in order to prevent the leakage of serum proteins from capillary endothelial junctions. This argument has been fully considered but is not deemed persuasive. The person of ordinary skill in the art would have known that oxidative stress on a patient can be overcome by the administration of art recognized antioxidants. Additionally, such oxidative stress would necessarily adversely effect the prevention of leakage of serum proteins from capillary endothelial junctions. When trying to prevent a patient from going into shock, i.e. loss of serum proteins via endothelial capillary junctions, one must obviously reduce all stresses on the persons, that is why the patient is kept warm and an i.v. of hydroxyethyl starch is started. It is simple logic that one should also want to keep the patient protected from oxidative stress by using one or more art recognized antioxidants. Thus, the instant method of modifying the teachings of Zikria et al. by adding one or more of art recognized antioxidants would have been obvious in the absence of clear and convincing evidence to the contrary. Motivation to combine references can be found in the prior art references or from knowledge common to artisans at the time of the invention.

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A better copy of the Weiss reference accompanies this Office action.

No claim is allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kunz, whose telephone number is (703) 308-4623. The examiner can normally be reached on Tuesday through Friday from 6:30 AM to 4:00 PM. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marion Knode, can be reached on (703) 308-4311. The fax phone number for this Group is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235.

Gary L. Kunz
GARY L. KUNZ
PRIMARY EXAMINER
GROUP 1200